(24)

Docket No. 93-880

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JUDY MADSEN, ED MARTIN and SHIRLEY HOBBS,
Petitioners,

v.

WOMEN'S HEALTH CENTER, INC., et al.,
Respondents.

On Writ of Certiorari
to the Supreme Court of Florida

Petitioners' Response to Solicitor General's Motion for Leave to Participate in Oral Argument and for Divided Argument

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I.

THE SOLICITOR GENERAL'S INTEREST IN INTERVENING AND PRESENTING ORAL ARGUMENT BASED ON INSURING ADEQUATE JUDICIAL RELIEF AND ACCESS TO ABORTION CLINICS IS NOT IMPLICATED OR AFFECTED BY *MADSEN*.

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States as *amicus curiae*, moved this Court to divide the Respondents' allotted time for oral argument. The Solicitor General's stated interest in intervening is "ensuring that adequate judicial relief is available to ensure access to medical clinics and patients engaged in providing and obtaining abortion-related services." The Solicitor General's primary interest is to assure that individuals are not permitted to block access to abortion-related

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facilities. However, that interest is not implicated or affected by *Madsen* as it is not challenged in this case. In ***Madsen***, the September 30, 1992, Permanent Injunction fully protects the interests stated by the Solicitor General. That injunction enjoined:

> 1) trespassing on, sitting in, blocking, impeding or obstructing ingress into or egress from any facility at which abortions are performed in Brevard and Seminole County, Florida;
>
> 2) physically abusing persons entering, leaving, working or using any services of any facility at which abortions are performed in Brevard and Seminole County, Florida; and,
>
> 3) attempting or directing others to take any of the actions described in Paragraphs 1 and 2 above.

J.A. 9.

The Petitioners in *Madsen* do not challenge the September 30, 1992, permanent injunction and have requested this Court to return to that injunction, which only prohibits blocking access to or egress from the Clinic, but does not prohibit protected first amendment speech and activities. Petitioners' brief stated that:

> The 1992 permanent injunction adequately protects the Clinic, the patients, and the public without infringing on free expression. The 1993 Injunction violates the first amendment and this Court should find it unconstitutional. Striking the 1993 Injunction does not affect the 1992 permanent injunction, which is not challenged here, and therefore the Clinic's interest would still be protected and the right to free speech would not be violated.

Pet. Br. 43.

The Solicitor General's stated interest is "to ensure access to medical clinics and patients engaged in providing and obtaining abortion-related services." The Solicitor General's reason for requesting oral argument is related to blocking clinics. The only controversy within *Madsen* is related to the first amendment free speech and freedom of association rights denied

by the 1993 Amended Permanent Injunction. In their brief, Petitioners assert this Court should strike the 1993 Amended Permanent Injunction and allow the 1992 permanent injunction to remain in force. *See* Pet. Br. 43 and 49. The only issue facing this Court is pure free speech, not blocking access to clinics. The interest of the Solicitor General will be adequately protected by the Respondents. Therefore, the Petitioners respectfully request this Court deny the Solicitor General's Motion for Leave to Participate in Oral Argument and for Divided Argument.

II.

THE SOLICITOR GENERAL'S STATED INTEREST IN THE PENDING FACE LEGISLATION IS ILLUSORY AND HIGHLY SPECULATIVE.

The Solicitor General's stated interest under FACE is that the "constitutional analysis that is applied by the Court in resolving this case may have a direct bearing on the validity and interpretation of that legislation." Initially, FACE is limited to prohibiting those who "by force, threat of force, or physical obstruction, intentionally injures, intimidates, or interferes with any person, or attempts to do so, because that person or any other person or class of persons is obtaining or providing reproductive health services." H.R. 796, 103d Cong., 1st Sess. § 2(a)(1) (1993). The purported purpose behind the FACE legislation is to prevent blocking access to clinics.

The purpose of the *Madsen* case is to redress the first amendment free speech and free association rights of the Petitioners. As noted, *supra*, this case does not advocate or support the blocking of ingress to or egress from medical clinics.

The parties in this case are not subject to FACE, nor was FACE an issue at any time during the lower court proceedings. The Solicitor General's stated interest in protecting that pending legislation is therefore illusory and highly speculative.

The Solicitor General's stated interest is also illusory and high speculative because FACE is *pending* legislation. It would be highly unusual for the Solicitor General to intervene and demand oral advocacy supporting a piece of pending legislation still undergoing revision in committee. While under debate, FACE is subject to substantial modification and revision before enactment. Moreover, the FACE legislation may never be enacted in this session, or in the future. Finally, the Solicitor General's request implies an advisory opinion by this Court on the "validity and interpretation of that legislation." In essence, the Solicitor General aspires to request this Court's validation of FACE before enactment. The interest of the Solicitor General can certainly be presented in a brief *amicus curiae* but there is clearly no reason to grant the Solicitor General opportunity for oral argument.

WHEREFORE, Petitioners, Judy Madsen, Ed Martin and Shirley Hobbs, respectfully request this Court to deny the Solicitor General's Motion for Leave to Participate in Oral Argument and for Divided Argument.

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 23rd day of March, 1994, by U.S. Mail to:

Talbot D'Alemberte, Esq.
Steel Hector & Davis
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
(904) 222-2300
Counsel for Respondents

Kathy Patrick, Esq.
1100 Louisiana, Suite 3400
Houston, TX 77002
(713) 650-8805
Counsel for Respondents

Susan A. England, Esq.
2805 Lakeview Drive
Fern Park, FL 32730
(407) 339-4600
Counsel for Respondents

Drew S. Days, III
Office of the Solicitor General
Department of Justice
10th Street & Constitution Ave. N.W.
Room 5143
Washington, D.C. 20530
(202) 514-2000
Solicitor General

Mathew D. Staver
(Counsel of Record)
Jeffery T. Kipi
Frederick H. Nelson
Michael D. Rouse
Liberty Counsel
1900 Summit Tower Boulevard
Suite 540
Orlando, FL 32810
(407) 875-0077

Attorneys for Petitioners Judy Madsen, Ed Martin and Shirley Hobbs, on behalf of Liberty Counsel

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